

UNITED STATES
v.
CATHERINE E. GAY

IBLA 78-358

Decided July 31, 1978

Appeal from decision of Administrative Law Judge Steiner declaring placer mining claims null and void. CA-4252.

Affirmed.

1. Mining Claims: Discovery: Generally

A discovery of a valuable mineral deposit has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

2. Administrative Procedure: Burden of Proof -- Mining Claims: Contests -- Mining Claims: Discovery: Generally

When the Government contests a mining claim on a charge of no discovery, it assumes the burden of going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

3. Administrative Procedure: Hearings -- Mining Claims: Hearings

The Government has established a prima facie case of nondiscovery when a mineral examiner testifies that he has examined a mining claim and has found the mineral values insufficient to support a finding of discovery.

4. Mining Claims: Determination of Validity -- Mining Claims:
Discovery: Generally

The prudent man test cannot be satisfied by a claimant's assertion that he is willing to accept a meager income from the claim. Determination of the validity of a mining claim can rest only on objective criteria, not subjective considerations.

5. Mining Claims: Contests -- Mining Claims: Discovery: Generally

This Department has authority and jurisdiction to contest mining claims on the ground that they are invalid for lack of a discovery of a valuable mineral deposit, regardless of whether any other use of the land is being made or sought. The motivation of the Forest Service in instigating a contest is irrelevant.

APPEARANCES: William B. Murray, Esq., Portland, Oregon, for appellant; Charles F. Lawrence, Esq., Office of the General Counsel, U.S. Department of Agriculture, San Francisco, California, for appellee.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Catherine E. Gay appeals from a decision by Administrative Law Judge R. M. Steiner, dated March 14, 1978, declaring the TWO BITS Placer Mining Claim, situated in a portion of NW 1/4 sec. 2, T. 22 N., R. 10 E., Mount Diablo meridian, Plumas County, California, null and void for lack of discovery of a valuable mineral deposit.

The contest was initiated by the Bureau of Land Management (BLM) which filed a complaint on May 27, 1977, alleging that the land embraced within the claim was nonmineral in character and that minerals had not been found within the limits of the claim in sufficient quantities to constitute a valid discovery. An evidentiary hearing was conducted on January 31, 1978, at Sacramento, California.

[1, 2, 3] The Judge found from the evidence that the contestant established a prima facie case of no discovery, and that the contestee failed to show by a preponderance that a discovery existed. The Judge's decision sets out the pertinent evidence and the applicable law. We agree with the decision and therefore adopt it as part of the decision of this Board.

Appellant presents the following contentions on appeal, inter alia:

- A. The mineral examiner failed to obtain representative samples and should return to the claim for further sampling.
- B. The "prudent man" test should not be applied where a claimant finds it rewarding to operate a claim with small cash outlay and meager returns.
- C. The contest was initiated at the behest of the Forest Service to remove appellant's cabin from the land.

Appellant's remaining assertions are not determinative of the issues at bar, and therefore need not be discussed.

Appellant's contentions concerning lack of representative sampling and insufficiency of the Government's evidence are unsupported by the record which amply demonstrates that nothing could be gained by a further examination of the claim. The mineral examiner had a duty to select representative samples, but not to perform discovery work. United States v. McClurg, 31 IBLA 8 (1977); See United States v. Dowell, A-30614 (November 21, 1966); United States v. Rukke, 32 IBLA 155 (1977).

[4] Appellant's contention "B" above is similarly without merit. The prudent man test is not met by a claimant's willingness to accept a meager income from the claim. The validity of a mining claim can be determined only on the basis of objective economic criteria, not subjective considerations. United States v. Becker, 33 IBLA 301 (1978).

[5] Appellant suggests that the contest was initiated to remove her cabin from the land. The motivation of the Forest Service in instigating the contest is irrelevant. This Department has the authority and jurisdiction to contest mining claims based upon governmental challenge that the claims are invalid for lack of discovery of a valuable mineral deposit, regardless of whether any other use of the land is being made or sought. See United States v. Johnson, A-30191 (April 2, 1965).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

March 14, 1978

United States of America,	:	<u>Contest No. CA! 4252</u>
	:	
Contestant	:	Involving the TWO BITS Placer
	:	Mining Claim, situated in a
v.	:	portion of NW! 1/4 Sec. 2,
	:	T. 22 N., R. 10 E., M.D.M.,
Catherine E. Gay,	:	Plumas County, California
	:	
Contestee	:	

DECISION

Appearances: Charles F. Lawrence, Esq.
Office of the General Counsel
U.S. Department of Agriculture
For the Contestant

Catherine E. Gay
In Propria Persona

Before: Administrative Law Judge Steiner

This is an action brought by the United States Bureau of Land Management pursuant to the Hearings and Appeals Procedures of the Department of the Interior, 43 C.F.R. Part 4, to determine the validity of the above-named placer mining claim.

The Contestant filed a Complaint herein on May 27, 1977, alleging, inter alia, as follows:

- A. There are not presently disclosed within the boundaries of the mining claim minerals of a variety subject to the mining laws, sufficient in quantity, quality, and value to constitute a discovery.

B. The land embraced within the claim is non-mineral in character.

The Contestee filed a timely Answer alleging affirmatively that a little gold had been recovered.

A hearing was held in Sacramento, California on January 31, 1978.

Henry W. Jones, after having been duly qualified as a mining engineer, testified that the claim, located on October 21, 1958, (Exhibit No. 1), is situated on Poorman Creek in the Plumas National Forest. The stream traverses the extreme north end of the claim (Exhibit No. 3). The only evidence of mining activity was along the creek. The stream area had been thoroughly worked during "old-time" mining operations. There was no evidence of existing mining activity. It was all very old and well worked over. He took a series of pan samples from the site at which he thought the most recent exploratory work had been done. The samples were concentrated and the concentrates submitted for assay. The assay report, Exhibit No. 8, shows eight milligrams of gold. This amounts to sixty-five cents per cubic yard. He also took a sample from a small drainage designated as the discovery point. He found no gold values in the sample. The quantity of gravels deposited on the claim was not sufficient to warrant a mining operation. It was his opinion, based upon his examination, that a reasonably prudent person would not be justified in expending further time and effort on the claim with the expectation of developing a paying mine.

On cross examination, he stated that there was approximately three to five hundred yards of gravel deposited at one point on the creek and another like amount which was thoroughly mined about the turn of the century. It was his opinion that the cost of mining the exposed gravels, approximately one thousand yards, would range from one dollar to one dollar and fifty cents per yard.

Catherine E. Gay testified that she had found iron, platinum, and gold in the stream. She displayed a plastic vial containing a number of flakes of gold, one of which was quite large. The large piece was found eight or ten years ago in an area which has since been washed in. The flakes of gold were recovered up and down the stream by gold pan, by sluice box, and some were just picked up. She has been working the claim since 1953. She had sold about seven or eight dollars worth of gold to a "Government Gold Buyer", but she had lost the receipts. She did not remember when those sales were made. Some gold had been given to her children. The stream bed has been very unstable

and she worked different areas each year. Other individuals would enter the claim before she did on occasion and clean out a lot of areas with suction equipment. She had purchased a caterpillar tractor, many sluice boxes, a gold retriever, shovels, wet suits and one suction pump.

On cross examination, she stated that she did not know exactly how much gold has been removed from the claim. Her children were allowed to keep the gold that they recovered. She herself received a very small amount of gold. She had performed at least one hundred dollars worth of assessment work on the claim during each of the last twenty-four years. The plastic vial displayed by the witness contained about three-fourths of an ounce of gold which was recovered over a period of several years.

Under the mining laws of the United States (30 U.S.C. § 22 et seq. (1970)) a valid location of a placer mining claim requires discovery of a valuable mineral deposit within the limits of the claim. The rule as to what constitutes a valid discovery has been stated as follows:

"* * * Where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine, the requirements of the statute have been met. * * *." Castle v. Womble, 19 L.D. 455, 457 (1894); Chrisman v. Miller, 197 U.S. 313 (1905); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963).

When the Government contests a mining claim it has assumed the burden of presenting a prima facie case that the claim is invalid. When it has done so, the burden then devolves on the mining claimant to prove by a preponderance of the evidence that the claim is valid. United States v. Zweifel, 508 F. 2d 1150, 1157 (10th Cir. 1975); United States v. Springer, 491 F. 2d 239, 242 (9th Cir.), cert. denied, 419 U.S. 234 (1974); Foster v. Seaton, 271 F. 2d 836, 838 (D.C. Cir. 1959).

The ultimate burden of proving discovery is always upon the mining claimant. United States v. Springer, supra.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings. United States v. Ruth Arcand, et al., 23 IBLA 226 (Jan. 1, 1976).

Returns which are so meager that they will not attract the labor and means of a person of ordinary prudence are not sufficient to demonstrate discovery of a valuable mineral deposit. United States v. Ruth Arcand, et al., supra.

The Contestant has established, prima facie, by the testimony of its expert witness, that there are no mineral deposits exposed on the claim which would justify a person of ordinary prudence in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine.

For twenty-four years, the Contestee has had possession of this claim. During this period of time, the amount of gold recovered has been negligible, amounting to only a small percentage of the value of the assessment work performed. The Contestee has neither designated or identified any specific placer deposit bearing sufficient minerals to warrant its development.

The mining claimant has failed to introduce sufficient probative evidence of a valid discovery of a valuable mineral deposit to overcome the prima facie case of lack of discovery established by the Contestant.

It is concluded that there has been no discovery of a valuable mineral deposit on the subject claim, and that the lands embraced thereby are nonmineral in character.

Accordingly, the Two Bits Placer Mining Claim is hereby declared null and void.

R. M. Steiner
Administrative Law Judge

Enclosure: Information Pertaining to Appeals Procedures

Distribution:

Catherine E. Gay, 4121 Fourth Avenue, Sacramento, California 95817 (Cert.)

Regional Attorney, Office of the General Counsel, U.S. Dept. of Agriculture, Two Embarcadero
Center, Suite 860, San Francisco, California 94111 (Cert.)

Standard Distribution

